

1. AFTER RECORDED

Federal Communications Commission

DA 03-4037

**Before the
Federal Communications Commission
Washington, D.C. 20554**

DEC 24 8 07 AM '03
FCC MAIL STOP 100

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 02-239
Table of Allotments,) RM-10529
FM Broadcast Stations.) RM-10711
(Alpine and Presidio, Texas))

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: December 18, 2003

Released: December 23, 2003

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Linda Crawford ("Crawford"), the Audio Division considers herein a *Notice of Proposed Rule Making*¹ proposing the allotment of Channel 293C to Alpine, Texas, as that community's fourth local aural transmission service. Crawford has filed comments and reply comments. Bend Broadcasting ("Big Bend") has filed Counterproposal and Comments ("Counterproposal")² in which it proposes to allot Channel 292C1 to Presidio, Texas, as that community's first local aural transmission service. Big Bend states that it will apply for Channel 292C1 if that channel is allotted to Presidio, and if its application is granted, it will construct a station for Presidio. For the reasons stated below, we allot Channel 292C1 to Presidio, Texas.

2. Big Bend's proposal to allot Channel 292C1 to Presidio is mutually exclusive with Crawford's proposal to allot Channel 293C to Alpine. In resolving conflicts between mutually exclusive proposals, we rely on the Commission's FM allotment priorities.³ Pursuant to those priorities, Big Bend's proposal to provide a first local aural transmission service to Presidio [FM allotment priority (3)] prevails over Crawford's proposal to add a fourth local aural transmission service to Alpine [FM allotment priority (4)]. Presidio is an incorporated city with a 2000 U.S. Census population of 4,167 persons. Big Bend asserts that Presidio has its own public schools, seven churches, two banks, nine restaurants, three real estate offices, several health facilities, and numerous other businesses and governmental offices. We conclude that Presidio is a community to which an FM broadcast allotment can be made pursuant to Section 307(b) of the Communications Act of 1934, as amended.

¹ *Alpine, Texas*, 17 FCC Rcd 16208 (MB 2002).

² Big Bend also filed a Supplement to its Counterproposal. The Supplement merely includes Internet excerpts verifying facts about Presidio that have already been stated in the Counterproposal. We have considered the Supplement in order to assure a complete record. By Public Notice, Report No. 2609, released June 10, 2003, rulemaking number RM-10711 was assigned to Big Bend's Counterproposal.

³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time service; (3) first local service; and (4) other public interest matters. Equal treatment is given to (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. We conclude that the public interest would be served by the allotment of Channel 292C1 at Presidio, Texas, since it will provide a first local aural transmission service to that community. Channel 292C1 can be allotted to Presidio, Texas, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's Rules at coordinates of 29-25-54 NL and 104-09-55 WL, with a site restriction of 24.6 kilometers (15.3 miles) southeast of Presidio, Texas. The Commission has not received concurrence for the Channel 292C1 allotment at Presidio from the Mexican Government. If a construction permit for Channel 292C1 at Presidio, Texas, is granted prior to the Commission's receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes."

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 6, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Presidio, Texas	292C1

5. No filing window for Channel 292C1 at Presidio, Texas, will be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That the aforementioned Counterproposal (RM-10711) filed by Big Bend Broadcasting IS GRANTED.

6. IT IS FURTHER ORDERED, That the Petition for Rule Making (RM-10529) filed by Linda Crawford in IS DENIED.

8. IT IS FURTHER ORDERED, that MM Docket No. 02-239 IS TERMINATED.

9. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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